

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|  |   |                      |
|--|---|----------------------|
| In the Matters of  | ) |                      |
| <b>Petition for Rulemaking of Central Texas<br/>Telephone Cooperative, Inc., <i>et al.</i></b> | ) | RM-11841             |
|  | ) |                      |
| <b>Modernizing the E-Rate Program for<br/>Schools and Libraries</b>                            | ) | WC Docket No. 13-184 |
|  | ) |                      |
| <b>Schools and Libraries Universal Service<br/>Support Mechanism</b>                           | ) | CC Docket No. 02-6   |
|  | ) |                      |

**REPLY COMMENTS OF UNITI FIBER**

Uniti Fiber<sup>1</sup> respectfully submits these reply comments to supplement its initial comments<sup>2</sup> in opposition to the petition for rulemaking (“Petition”) filed by a group of Texas carriers (Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc., and Totelcom Communications, LLC (collectively, “Petitioners”)).<sup>3</sup> The requested rule changes are unnecessary, do not offer solutions, and would harm the competitive market for E-rate services by installing a thicket of bureaucratic barriers to deploying broadband.

**I. Supporting Commenters Wrongly Assert that Small Providers Are Disadvantaged by Large Consortia Bids**

The comments in support of the Petition assert the same flawed premise and misconceptions of the E-rate consortia competitive bidding process as the Petitioners; wide area

---

<sup>1</sup> “Uniti Fiber” refers to a group of companies commonly owned by Uniti Group Inc. that provide telecommunications and other services in various parts of the U.S. It is comprised of Southern Light, LLC, Uniti Fiber LLC, Hunt Telecommunications, Inc., Information Transport Solutions, Inc., and certain other affiliated service providers.

<sup>2</sup> Uniti Fiber Comments, RM-11841, WC Docket Nos. 02-6, 13-184 <https://www.fcc.gov/ecfs/filing/107010508627947> (filed July 1, 2019).

<sup>3</sup> *Petition for Rulemaking of Central Texas Telephone Cooperative, Inc. et al.*, RM-11841, WC Docket Nos. 02-6, 13-184, <https://www.fcc.gov/ecfs/filing/10522043215849> (filed May 22, 2019) (*Petition*).

networks (“WANs”) disadvantage small providers due to the “sheer size of the requested WANs.”<sup>4</sup> This argument, at best, misunderstands the E-rate consortia competitive bidding rules, or, at worst, ignores requirements that small local exchange providers (“LECs”) receiving High Cost support must bid on partial consortia proposals. The record overwhelmingly illustrates that the Commission dispelled this misconception in the *2014 Modernization Order* by clarifying that a single provider did not have to serve all members of a consortium.<sup>5</sup> The Commission makes clear that consortia, in both requests for service and in evaluating bids, must consider selecting multiple service providers as “a combination of different service providers [can] offer the most cost-effective solution.”<sup>6</sup> Even further, the consortium proposal at question in the Petition did not restrict bidders from submitting partial bids and did not give preference to selecting one service provider.<sup>7</sup>

By arguing that small LECs receiving High Cost support are foreclosed from bidding on large consortium RFPs, the Petitioners and similarly situated commenters ignore Commission rules and misstate the legal requirements of the E-rate program. The *December 2014 E-Rate Order* requires High Cost carriers, like Petitioners and supporting commenters, to bid on FCC Form 470s

---

<sup>4</sup> *Petition* at 2; WTA Comments at 2-5; Colorado Valley Telephone, *et al.* Comments at 3-4; USTelecom Comments at 2-4; NTCA Comments at 10-12; Valley Telephone Cooperative Comments at 1-4; Eastex Telephone Coop & Nortex Communications Comments at 2-5.

<sup>5</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8943, para. 179 (2014) (*2014 Modernization Order*); State E-Rate Coordinator’s Alliance (SECA) Comments at 9-11; AASA & AESA Comments at 2; New America’s Open Technology Institute Comments at 11-12; INCOMPAS Opposition at 6-9; SHLB, *et al.* Comments at 7-9; Education Super Highway Comments at 7-8.

<sup>6</sup> *2014 Modernization Order*, 29 FCC Rcd at 8943, para. 179.

<sup>7</sup> SHLB, *et al.* Comments at 6 (*citing* ESC Region 10 RFP at pp. 3-4, Section 2.k) (“This contract may be awarded to a single vendor **or multiple vendors** as determined to provide the best value to the ESC Region 10 Consortium. ESC Region 10 Consortium reserves the right to negotiate with **any or all respondents and accept or reject any and/or all proposals**, to waive any formalities and/or irregularities and to award in the best interest of the Consortium.” [emphasis added]).

in their service area or be subject to enforcement actions.<sup>8</sup> Petitioners and supporting commenters reveal small incumbent LECs may not be bidding on consortia RFPs even if they could serve some schools within consortia with existing assets.<sup>9</sup>

## **II. Any Presumption that E-Rate Special Construction Support Duplicates High Cost Support Is Wrong**

Petitioners and supporting commenters assume E-rate special construction “overbuilds” or duplicates *connections* to schools and libraries that are otherwise supported by High Cost funding.<sup>10</sup> The Petitioners claim to have built “broadband infrastructure, including fiber *connections*, to schools in their areas with the assistance of E-rate and High Cost Programs.”<sup>11</sup> Supporting commenters, including WTA, also wrongly argue that schools “will have two fiber *connections* paid for by Universal Service dollars: one via the High Cost program and the other via the E-Rate program.”<sup>12</sup> NTCA echoes the same legal misunderstanding that E-rate special construction can lead to redundant USF payments for “services over *connections* already funded by High Cost USF.”<sup>13</sup>

---

<sup>8</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 29 FCC Red 15538, 15563-66, paras. 60-67 (2014) (*December 2014 Modernization Order*).

<sup>9</sup> Valley Telephone Cooperative Comments at 3-4 (Not submitting a partial bid on a large consortium RFP due to the size and the RFP only seeking one service provider. Valley does not provide cites to the RFP or the language of the proposal to support such a restriction.); Eastex Telephone Coop & Nortex Communications Comments at 3-4 (Discussing the size of proposed projects spanning multiple rural carrier exchange areas and limiting the bidding on such proposals. Further, stating bidding criteria preference for single providers can prohibit small carrier participation without providing any citation to or copies of such bidding criteria); WTA Comments at 3 (Stating rural telephone companies were “effectively denied the ability to bid” on large RFPs that were outside their service territories, but not providing information about partial bids for schools located within the service territories.).

<sup>10</sup> *Petition* at 2; WTA Comments at 2-5; Colorado Valley Telephone, *et al.* Comments at 2-3; USTelecom Comments at 2-4; NTCA Comments at 6-7; Valley Telephone Cooperative Comments at 1-4; Eastex Telephone Coop & Nortex Communications Comments at 2-4.

<sup>11</sup> *Petition* at 2 (emphasis added).

<sup>12</sup> WTA Comments at 3 (emphasis added).

<sup>13</sup> NTCA Comments at 2 (emphasis added).

However, the record and the accompanying USF rules establish this argument is factually wrong.<sup>14</sup> High Cost funding supports the construction and maintenance of broadband-capable facilities in particular *areas*,<sup>15</sup> but does not direct specific last-mile builds that connect *specific locations*.<sup>16</sup> Further, High Cost funding supports *residential* consumers with lower speed requirements<sup>17</sup> that are not equivalent to the *enterprise* services schools and libraries subscribe to in E-rate.<sup>18</sup> Finally, E-rate support in any particular service area is not counterproductive to High Cost funding in that area. Incumbent providers can bid on large special construction RFPs for locations already served or reasonably close to their fiber networks. This additional E-rate funding spurs further network investment from these anchor institution builds. E-rate and High Cost funding, like the other USF programs, complement each other to achieve the overall goals of the Universal Service Fund. The underlying purposes of the two separate support mechanisms are not

---

<sup>14</sup> SECA Comments at 2-5.

<sup>15</sup> See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17680, para. 48 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3164, para. 208 (2016) (*citing Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15688-89, para. 125 (2014) (*2014 High Cost Modernization Order*); 47 CFR § 54.313(e)) (explaining High Cost funding goals and policies to focus spending on deploying broadband-capable infrastructure to areas lacking service at specific Internet speed thresholds, and designing reporting requirements based on locations capable of being served, but not on subscription).

<sup>16</sup> 47 CFR § 54.502(a)(1); see USAC, *Fiber – Summary Overview*, (September 2017) (explaining the types of special construction funding available to schools and libraries to support subscription and connection through E-Rate).

<sup>17</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17697, para. 94 (establishing a 4/1 Mbps standard); see also *2014 High Cost Modernization Order*, 29 FCC Rcd at 15649, para. 15 (requiring companies receiving High Cost funding for fixed broadband to serve consumers with speeds of at least 10 Mbps for downloads and 1 Mbps for uploads).

<sup>18</sup> See *2014 Modernization Order*, 29 FCC Rcd at 8885-86, paras. 34, 39 (stating the connectivity goals of the E-rate program are 100 Mbps per 1000 students for Internet access, and 10 Gbps per 1000 students for WAN/last mile connectivity).

duplicative, the broadband facilities deployed through these two programs are not duplicative; and therefore, the program funds used to pay for those broadband deployments are not duplicative.

### **III. Proposed Rules Do Not Solve Potential Waste Concerns; Instead, Ensure Incumbent Providers Receive Priority in E-rate Funding**

The record establishes E-rate’s competitive bidding and cost-effectiveness processes are adequate safeguards against overbuilding concerns.<sup>19</sup> The E-Rate program is designed to ensure that the institution requesting support obtain service in an efficient and cost-effective manner. High Cost carriers with existing facilities should be at an advantage to provide more cost-effective services than competitive providers who would construct, resell, or otherwise provision a service solution without existing installed assets.

Again, the flawed logic of the Petitioners and supporting commenters “solves” illusory overbuilding harms by removing current competitive bidding protections and replacing them with incumbent carriers’ challenge and negotiation processes. These new rules would erect bureaucratic barriers to deploying broadband in place of the current competitive bidding process for E-rate services. The Petition’s proposed rules give incumbent providers a second opportunity to receive funding they should have bid on, and did not win in a competitive bid process, in the first instance. Further, the negotiation process harms competitive markets by providing incumbent carriers competitive pricing information they would not have in normal business course. The negotiation process also removes incentives to increase technical capabilities or lower costs if incumbent carriers can match competitive bids *ex post*. Finally, the proposed process would create significant additional delays in an already long process, ultimately harming the schools and libraries, the affected students and library patrons, and their communities. In short, the Petition’s proposed rules

---

<sup>19</sup> SECA Comments at 5-9; Education Service Center – Region 11 Comments at 2-3; AASA & AESA Comments at 2; Benton Foundation Comments at 3-4; INCOMPAS Comments at 6-9; SHLB, *et al.* Comments at 7-9; Education Super Highway Comments at 4-5; Center for Democracy & Technology at 2; Infinity Comments at 3-5.

would provide incumbent carriers with the means to undermine the competitive bidding process to the detriment of the E-Rate program and would not serve the public interest.

#### **IV. Implementing the Proposed Rule Changes Will Cause Further Delays in Delivering Broadband to Eligible Schools and Libraries**

If adopted, the proposed rules would grind E-rate funding to a halt with a deluge of *ad hoc* challenges, protracted negotiations, and construction deadline waiver requests. The proposed rules add an additional 180 days for incumbent providers to review, challenge, and negotiate following the competitive bidding process.<sup>20</sup> The record rejects this additional delay as untenable to the current E-rate funding year schedule and state procurement laws.<sup>21</sup> The application approval process, especially for special construction requests, can already take a full calendar year to complete.<sup>22</sup> The record provides ample evidence that the proposed rules would result in an additional 12 to 18 months before schools or service providers could construct fiber.<sup>23</sup> In addition to unreasonably delaying funding commitments and the viability of constructing services in the funding year, the 60-day challenge process will result in fact specific adjudications decided by USAC with further appeals to the FCC.

E-rate already faces a staggering appeals backlog with schools and service providers waiting years for decisions.<sup>24</sup> Increasing the amount of disputes to be resolved in *ad hoc* review

---

<sup>20</sup> *Petition* at Exhibit 1, pages i-iii.

<sup>21</sup> SECA Comments at 13-16; Education Service Center – Region 11 Comments at 4; AASA & AESA Comments at 3; New America’s Open Technology Institute Comments at 6-8; Benton Foundation Comments at 7-9; INCOMPAS Comments at 10-13; Tim Jones Comments at 1; SHLB, *et al.* Comments at 9-13; Education Super Highway Comments at 3-4; Center for Democracy & Technology at 1; Infinity Comments at 1-3; CVN Comments at 4-5.

<sup>22</sup> Benton Foundation Comments at 7.

<sup>23</sup> SECA Comments at 13-16; Education Service Center – Region 11 Comments at 4; AASA & AESA Comments at 3; New America’s Open Technology Institute Comments at 6-8; Benton Foundation Comments at 7-9; INCOMPAS Comments at 10-13; Tim Jones Comments at 1; SHLB, *et al.* Comments at 9-13; Education Super Highway Comments at 3-4; Center for Democracy & Technology at 1; Infinity Comments at 1-3; CVN Comments at 4-5.

<sup>24</sup> *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, WC Docket Nos. 02-6, 06-122, Public Notice, DA 19-589 (Monthly appeals disposition notice only resolving requests based on settled FCC precedent. This notice resolved more than 75 appeals pending as far back as 2005).

would delay the finality of funding commitments and increase the burden on USAC and FCC staff to respond to appeals. The Commission should focus on streamlining the existing E-Rate funding processes to push broadband to rural communities faster, not establishing new bureaucratic barriers to deployment that will only slow the rollout of broadband to those rural and underserved communities that need it most.

## V. Conclusion

The Petition and record fail to present a compelling case to initiate a rulemaking. The Petitioners and supporting commenters wrongly claim small providers are disadvantaged by consortia WAN proposals by ignoring Commission rules. Additionally, Petitioners and supporting commenters misstate the purpose of High Cost and E-rate funding to support illusory overbuilding claims. Moreover, the Commission must view any proposed process that would subvert awards based on the competitive bidding process with a high degree of skepticism. Finally, the record supports denying the Petition as the requested rule changes are unnecessary, do not offer solutions, would introduce interminable delays to construction projects funded by the E-rate program, and would harm the competitive market for E-rate services.

Respectfully submitted,

/s/ Jeffrey R. Strenkowski

Vice President, Deputy General Counsel of  
Governmental Affairs  
UNITI FIBER  
10802 Executive Center Drive, Suite 300  
Little Rock, Arkansas 72211  
(501) 458-4397  
jeffrey.strenkowski@uniti.com

Ronald W. Del Sesto Jr.  
Tamar Finn  
Christian E. Hoefly Jr.  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave, NW  
Washington, DC 20004  
(202) 739-3000  
ronald.delsesto@morganlewis.com  
tamar.finn@morganlewis.com  
christian.hoefly@morganlewis.com

*Counsel to Uniti Fiber*

Dated: July 16, 2019